



[4410-05P]

**DEPARTMENT OF JUSTICE**

**Bureau of Prisons**

28 CFR Part 524

[BOP-AB60-F]

RIN 1120-AB60

**Progress Reports Rules Revision**

**AGENCY:** Bureau of Prisons, Justice.

**ACTION:** Final Rule.

**SUMMARY:** In this document, the Bureau of Prisons (Bureau) removes from regulations and/or modifies two types of progress reports: transfer reports and triennial reports.

**DATES:** This rule is effective on [Insert date 30 days after publication in Federal Register].

**FOR FURTHER INFORMATION CONTACT:** Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307-2105.

**SUPPLEMENTARY INFORMATION:**

In this final rule, the Bureau removes from regulations and/or modifies two types of progress reports: transfer reports and triennial reports. We published a proposed rule on this topic on September 15, 2011 (76 FR 57012).

Section 524.41, entitled "Types of progress reports," lists several types of progress reports prepared for non-Bureau entities, such as for parole hearings, pre-release, final (prepared 90 days before an inmate's release to a term of supervision), and for other reasons (such as upon court request or a clemency review). The previous regulations also identified two types of progress reports that were primarily intended for internal Bureau purposes: those prepared when inmates transfer to community confinement or another institution, and those prepared triennially if not more frequently done for any other reason.

Transfer Reports. The previous regulations defined "transfer report" as one prepared on an inmate recommended and/or approved for transfer to community confinement or to another institution and whose progress has not been summarized within the previous 180 days. The Bureau modifies this definition in the final rule to indicate that transfer reports will only be prepared on inmates transferring to community confinement or non-Bureau facilities.

Current Bureau practice and advances in technology have obviated the need to prepare a specific paper report when an inmate is transferred between Bureau facilities. When an inmate

is transferred, all pertinent information regarding the progress of an inmate being transferred has already been updated in the Bureau's computer system, which staff may access at all Bureau facilities. It is, therefore, unnecessary for a separate and specific progress report to be prepared by staff at the transferring Bureau facility for staff at the receiving Bureau facility, when receiving facility staff can easily access this information themselves through the Bureau's computer system.

However, when an inmate is transferring to any non-Bureau facility, staff at that facility may not have access to the Bureau's computer system. The proposed rule also contemplated removing the requirement to prepare transfer reports for inmates transferring to Bureau community confinement facilities. However, since publishing the proposed rule, it has come to the Bureau's attention that some Bureau community confinement facilities do not yet have the capability to access the Bureau's computer system. Therefore, because they do not have consistent access to the Bureau's computer system, it would be necessary for Bureau staff to prepare a transfer report detailing an inmate's progress for inmate transfers to both community confinement facilities and non-Bureau facilities. In an abundance of caution, therefore, we modify the proposed rule to

indicate that transfer reports must continue to be prepared not only for inmate transfers to non-Bureau facilities, but for transfers to community confinement as well.

Triennial Reports. In the final rule, the Bureau deletes triennial reports as a type of progress report. Previous regulations stated that a progress report would be prepared on each designated inmate at least once every 36 months if not previously generated for another reason.

Before the development of the internal Bureau computer information network, triennial reports were a necessary tool used to provide staff with specific inmate information. As explained above, however, current Bureau practice and advances in technology have obviated the need to prepare a specific progress report every 36 months, because all information regarding an inmate's progress is continually updated in the Bureau's computer system, which staff may access at all Bureau facilities.

### **Response to Comments**

We received a total of 4 comments on the proposed rule. We address issues raised by each commenter below.

Two commenters expressed concerns with the Bureau's computer system, which we referred to in the proposed rule. We stated that there is no need for a transfer report when an inmate is transferred between Bureau facilities because inmate information is updated in the Bureau's computer system, which staff may access at all Bureau facilities. We also stated that information regarding an inmate's progress is continually updated in the Bureau's computer system, obviating the need for a triennial report. The commenter stated that "there should be a backup in the case that the computer system becomes temporarily or permanently unavailable."

The Bureau's "backup" in case of unavailability of the computer system is the Inmate Central File. All information regarding an inmate's progress is contained in that inmate's Central File, which is a physical, paper file which accompanies the inmate when he/she is transferred from facility to facility. Staff update the Central File whenever there is new activity with regard to the inmate. For instance, work reports are filed quarterly or monthly, inmate program completion certificates are filed when the inmate completes programs, disciplinary reports are filed when there are disciplinary incidents, etc., just as the computer system is continually updated.

Another commenter requested that the Bureau provide a "more clarified reason for the removal [of triennial reports and transfer reports between Bureau facilities] and how it will benefit the public and agency." We explain the benefit in terms of the amount of staff time per year that would be saved. Both transfer reports and triennial reports take an average of one staff hour per report to complete. In the calendar year 2010, there were 69,517 transfers of inmates between Bureau facilities. Eliminating transfer reports between Bureau facilities would therefore result in a staff time savings of approximately 69,517 hours per year. As of January 2012, there are approximately 1,080 Bureau of Prisons case managers doing approximately 75 hour-length triennial reports per year. This results in an approximate staff time burden nationwide of 81,000 hours per year. Thus, eliminating transfer reports between Bureau facilities and triennial reports would save the Bureau approximately 150,517 staff hours per year, which could then be devoted to better ensuring the safety, security, and good order of the facilities and protection of the public through means such as detection of contraband, illegal communications, criminal activity, and other such problems.

A commenter had some specific questions with regard to

transfer reports. He asked: "Does the [computer] network address every issue a report would? Does the staff at the receiving Bureau [facility] fully examine the inmate's record upon arrival or is it possible that some important information could be missed?"

The purpose of the transfer report was to provide a summary of the inmate's progress and adjustment for the receiving institution. However, on review of this process, the Bureau determined this summary to be unnecessary because (1) the information input in the computer system included far more than that contained in the transfer report; and (2) staff at the receiving facility are required to review the Inmate Central File for the transferred inmate immediately upon the inmate's arrival in order to determine suitability for placement in general population regardless of whether they had reviewed the summary contained in the transfer report. Further, any decisions pertaining to the inmate must be based on a review of the Inmate Central File as a whole and an evaluation of the inmate during intake screening, not solely on the transfer report. While it is always possible that information may be missed, it is more likely that information would be missed during a cursory review of the summary contained in a transfer

report than during a more thorough review of the entire Inmate Central File.

Two commenters also raised concerns that elimination of the triennial report requirement would cause less frequent reviews of inmate progress by staff. One commenter asked, "Is it possible to include in the rule a clause that demands the information is reviewed triennially by the staff?"

The language in the regulation requiring a triennial report was a requirement on staff to complete the report, not a requirement on staff to review an inmate's progress. It is unnecessary to specifically include a clause in these regulations requiring staff to review an inmate's progress triennially because current regulations on inmate program reviews (28 CFR part 524) already require staff to review inmate progress through program reviews at least once every 180 calendar days or more frequently.

For the aforementioned reasons, we now finalize the proposed rule published on September 15, 2011 (76 FR 57012), with a minor change to re-insert the requirement to prepare transfer reports for inmates transferring to community confinement.



### **Executive Order 12866**

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute "significant regulatory actions" under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

### **Executive Order 13132**

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determine that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### **Regulatory Flexibility Act**

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and by approving it certifies that it will not have a significant economic impact upon a substantial number of small entities for

the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

#### **Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### **Small Business Regulatory Enforcement Fairness Act of 1996**

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of

United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 524

Prisoners.

Charles E. Samuels, Jr.

Director, Bureau of Prisons

Under rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we amend 28 CFR part 524 as set forth below.

#### **PART 524 -- CLASSIFICATION OF INMATES**

1. The authority citation for 28 CFR part 524 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3521-3528, 3621, 3622, 3624, 4001, 4042, 4046, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006-5024

(Repealed October 12, 1984 as to offenses committed after that date), 5039; 21 U.S.C. 848; 28 U.S.C. 509, 510.

2. In § 524.41, remove paragraphs (d) and (e), redesignate paragraph (f) as (e), and add a new paragraph (d) to read as follows:

§ 524.41 Types of progress reports.

\* \* \* \* \*

(d) *Transfer report* - prepared on an inmate transferring to community confinement or any non-Bureau facility.

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